

## **REMARKS**

The issues outstanding in the Office Action mailed March 7, 2007, are the rejections of under 35 U.S.C. §112, obviousness-type double patenting, and 35 U.S.C. §103. Reconsideration of these issues, in view of the following discussion, is respectfully requested.

### **Rejection Under 35 U.S.C. §112**

Claims 1, 3-6 and 9-16 have been rejected under 35 U.S.C. §112, second paragraph. It is argued that it is unclear whether the term "gelatin" encompasses "gelatin capsule." Applicants respectfully disagree, inasmuch as it would be stretching the normal understanding of one of ordinary skill in the arts to interpret the language "pharmaceutical preparation (comprising/consisting etc.) of active compound, *gelatin* and fillers" as *active compound, gelatin capsules and fillers*. However, in order to clarify the claim, the language suggested by the examiner has been incorporated. It is submitted that, in view of the above discussion, it is clear that the scope of the claim has not changed, either literally or for purposes of the doctrine of equivalents, by these amendments. Withdrawal of the rejection is, in any case, respectfully requested.

### **Obviousness-Type Double Patenting**

Claims 9 and 11-13 have been rejected under the doctrine of obviousness-type double patenting over claims 1-4 of U.S. Patent 6,491,946. It is submitted that this issue is moot, in view of the attached Terminal Disclaimer. Withdrawal of the rejection is therefore respectfully requested.

### **Rejection Under 35 U.S.C. §103**

Claims 9-16 have been rejected Under 35 U.S.C. §103 over Reynolds '332 taken with Schreder et al. '946. Reconsideration of this rejection is also respectfully requested.

As admitted at page 4 of the Office Action, Reynolds fails to include gelatin in its disclosure of materials, and thus fails to suggest the present claims. Schreder is not available as a reference against the present application, inasmuch as its PCT filing date of June 29, 1999, its §371 date of January 5, 2001, its PCT publication date of January 20, 2000 and its U.S. issue date of December 10, 2002, are all subsequent to the international filing date of the

present application, May 5, 1999, for PCT/EP99/03087. See MPEP §1893.03(b). Thus, inasmuch as it is admitted in the Office Action that Reynolds fails to teach the features of the present claims, it is clear that this rejection also fails and should be withdrawn. The same is respectfully requested.

The claims of the application are submitted to be in condition for allowance, however, should the examiner have any questions or comments, she is cordially invited to telephone the undersigned at the number below.

A 1-Month Extension of Time and Terminal Disclaimer are submitted with this Amendment and Reply and the fees are being paid via EFS. No other fees are believed to be due in connection with this filing, however, the Commissioner is hereby authorized to charge any additional fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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